



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0014; FRL-10020-56-Region 9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or “the District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) and particulate matter (PM) from indirect sources associated with new development projects as well as NO_x and PM emissions from certain transportation and transit development projects. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0014 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the

primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at evans.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Amended	Submitted
SJVUAPCD	9510	Indirect Source Review	12/21/17 (effective March 21, 2018)	05/23/18

On November 23, 2018, the submittal for SJVUAPCD Rule 9510 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 9510 into the SIP on May 9, 2011 (76 FR 26609). The SJVUAPCD adopted revisions to the SIP-approved version on December 21, 2017, and the CARB submitted the revised rule to the EPA on May 23, 2018. If we take final action to approve the December 21, 2017 version of Rule 9510, this version will replace the previously approved version of this rule in the SIP.

C. What is the purpose of the submitted rule revision?

Emissions of NO_x contribute to the production of ground-level ozone, smog and PM, which harm human health and the environment. Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control NO_x and PM emissions.

Rule 9510 is an indirect source review (ISR) rule that establishes a mechanism to reduce or offset emissions of NO_x and PM₁₀ in the San Joaquin Valley from the construction and use of development projects through design features, on-site measures, and off-site measures. The rule requires applicants of new development projects to reduce operational and construction

equipment NO_x and PM₁₀ emissions by specific percentages, as compared to an unmitigated baseline. The rule requires applicants to incorporate design features and on-site measures into the development project or pay a mitigation fee for emissions in excess of the requirement.

SJVUAPCD uses the fees to fund off-site emission reduction projects.

The SIP-approved version of the rule applies to project applicants seeking “final discretionary approval” for a development project. However, through implementation of the existing rule, the District has found that projects subject to final discretionary approval can vary between public agencies for the same type of project, especially large development projects.

SJVUAPCD modified Rule 9510 to ensure the rule is applied consistently to all large development projects in the San Joaquin Valley by adding additional applicability criteria for large development projects and making clarifying and editorial changes to the rule.

“Grandfathered Large Development Projects” and previously exempt large development projects that received a building permit, conditional use permit, or other similar approval by March 21, 2018, remain exempt from this rule. The EPA’s technical support document (TSD) has more information about this rule.

II. The EPA’s Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

The San Joaquin Valley is currently designated and classified as an Extreme 1-hour ozone nonattainment area and an Extreme 8-hour ozone nonattainment area under the 1997, 2008, and 2015 standards (40 CFR 81.305). CAA section 172(c)(1) requires ozone nonattainment areas to implement all reasonably available control measures (RACM), including

such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. CAA sections 182(b)(2) and 182(f) specify that implementation of RACT under CAA section 172(c)(1) is required for all major stationary sources of NO_x in the area.

Generally, SIP rules must implement Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in Serious PM_{2.5} nonattainment areas (see CAA section 189(b)(1)(B)). The SJVUAPCD regulates a PM_{2.5} nonattainment area classified as Serious for the PM_{2.5} for the 1997 annual and 24-hour PM_{2.5} standards and the 2006 24-hour PM_{2.5} standards (40 CFR 81.305). A BACM and BACT evaluation is generally performed in context of a broader plan. The area is currently designated attainment for PM₁₀. Accordingly, SJVUAPCD is not required to implement BACM or BACT for PM₁₀ and PM₁₀ precursors.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).

B. *Does the rule meet the evaluation criteria?*

In our May 9, 2011 (76 FR 26609) final rule approval of Rule 9510 into the SIP, we identified a number of concerns about the enforceability of the rule’s provisions, e.g., provisions that allow project developers to pay a fee instead of implementing on-site pollution mitigation plans, and noted that the State would need to resolve these enforceability issues before relying on this rule for credit in an attainment plan. The District has not addressed these concerns in the submitted rule, and we therefore continue to conclude that the rule does not qualify for emission

reduction credit for the purpose of any attainment or progress demonstration in any area.

As described above, the District revised the rule applicability to include large development projects that are not currently subject to the rule and made editorial and clarifying changes. The revisions are generally clear and strengthen the rule. In addition to addressing the enforceability concerns outlined in our prior action, if the District plans to rely on emission reductions from this rule for attainment or progress demonstrations, the District should revise section 3.17 to further clarify which “Grandfathered Large Development Projects” are exempt from the rule by quantifying “substantial loss” and include other specific criteria that would allow for these provisions to be applied in a consistent and replicable manner.

With respect to rule stringency, we note that Rule 9510 is an ISR rule, and that EPA is prohibited by the CAA from requiring states and local air agencies to include ISR programs in SIPs.¹ Because EPA cannot require a state or local air agency to adopt and implement an ISR program, the EPA cannot require that such a program meet any particular level of stringency. Therefore, we are not evaluating amended Rule 9510 for compliance with the RACM/RACT or BACM/BACT requirements.

We conclude the rule is consistent with the relevant requirements, policy, and guidance regarding SIP relaxations since the rule revisions add further applicability and strengthen the current SIP-approved rule. However, we continue to conclude that the rule is not fully consistent with the relevant requirements, policy, and guidance on enforceability. While Rule 9510 does not meet all the evaluation criteria for enforceability, the EPA proposes to fully approve the submitted rule because it would strengthen the SIP compared to the current SIP-approved rule. In light of the deficiencies identified in our prior action and above, we continue to conclude that the rule should not be credited in any attainment and rate of progress/reasonable further progress demonstrations. The TSD has more information on our evaluation.

C. *The EPA’s recommendations to further improve the rule*

¹ CAA section 110(a)(5)(A)(i).

The TSD includes recommendations for the next time the local agency modifies the rule.

D. Public comment and proposed action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule. We will accept comments from the public on this proposal until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the San Joaquin Valley Unified Air Pollution Control District rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 16, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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